

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals Nos. L-12-1102
L-12-1201

Appellee

Trial Court Nos. CR0201101784
CR0201003118

v.

Willie Lee Wright, Jr.

DECISION AND JUDGMENT

Appellant

Decided: June 28, 2013

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

Robert P. Soto, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which denied appellant's motion to withdraw no contest pleas in a case entailing extensive plea negotiations, a substantial number of court hearings, and numerous failures to appear by appellant.

{¶ 2} Pursuant to the voluntary plea agreement that was ultimately struck, appellant pled no contest to an amended, lesser offense of robbery and one of two counts of illegal processing of a drug document. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} The followed undisputed facts are relevant to the issues raised on appeal. On November 29, 2010, appellant, Willie Lee Wright, Jr., was indicted on two counts of the illegal processing of drug documents, in violation of R.C. 2925.23, felonies of the fourth degree. The charges stemmed from appellant's attempt to submit two forged prescriptions for Schedule II controlled substances at a Toledo area pharmacy. On December 14, 2010, appellant failed to appear for arraignment. A warrant was issued. On February 23, 2011, appellant was arrested due to his failure to appear.

{¶ 4} On February 28, 2011, appellant was arraigned. The trial court appointed counsel to represent appellant. Appellant was released on a recognizance bond which stipulated that appellant could not ingest illicit drugs, alcohol, and/or prescription medication not lawfully prescribed to him. In addition, it also ordered appellant to submit to random urinalysis testing.

{¶ 5} On April 29, 2011, appellant was found competent to stand trial. A recognizance bond with the same terms and conditions as delineated in the initial bond was issued.

{¶ 6} On May 23, 2011, appellant's bond was revoked based on violations of the terms and conditions by appellant. In addition, in the interim, appellant had been charged

with additional criminal acts. Appellant stole a purse from a visitor in the intensive care unit at Toledo Hospital. The victim was a woman who was visiting her hospitalized husband. Appellant was directly observed absconding with the purse by the victim and also by hospital staff. Appellant was pursued and the purse was recovered. On May 26, 2011, appellant was indicted on one count of robbery, in violation of R.C. 2911.02, a felony of the second degree. Following this second indictment during the pendency of the initial cases, all cases were consolidated and new counsel was appointed for appellant.

{¶ 7} Four pretrials were scheduled in June and July 2011. All were continued at appellant's request. Another recognizance bond was ultimately issued. Appellant's newest bond also required him to be placed on electronic monitoring given his propensity to not appear in court and also to have no contact with the Toledo Hospital robbery victim. On August 3, 2011, another warrant was issued for appellant in connection to his violation of electronic monitoring.

{¶ 8} On September 7, 2011, following multiple additional hearings and negotiations, the case was set for trial. In a final effort to resolve the matter voluntarily, appellee offered a plea agreement to appellant in which the robbery count would be amended to a lesser level of that offense and one of the two remaining counts would be dismissed. After consulting with his attorney and being allowed a recess in which to contemplate the matter, appellant conveyed his acceptance of the proposal. Appellant entered pleas of no contest to an amended count of robbery, a felony of the third degree,

in violation of R.C. 2911.02(A)(3), and one count of illegal processing of drug documents, a felony of the fourth degree, in violation of R.C. 2925.23(B)(1) and (F)(1). The remaining charge was dismissed. Sentencing was set for October 17, 2011. It did not occur.

{¶ 9} On November 18, 2011, following appellant's third change of counsel, the cases were continued yet again at appellant's request. Notably, in total, the matter was continued six more times at appellant's request.

{¶ 10} On February 13, 2012, appellant failed to appear in court for sentencing. A warrant was issued. Appellant's attorney filed motions to withdraw appellant's no contest pleas. The cases were continued again given another failure to appear by appellant. After one additional continuance, the matter was set for trial on March 29, 2012.

{¶ 11} On March 29, 2012, appellant failed to appear. Another warrant was issued for his arrest. All witnesses that had appeared to testify at trial were released. Appellant appeared later that day. Given both an extensive history of failures to appear and countless continuances, in conjunction with the lack of a compelling substantive basis, the trial court denied the motion to withdraw the no contest pleas. Appellant was sentenced to community control and a suspended term of incarceration of two years. Appellant was clearly advised by the trial court that any violation of his community control terms could result in the imposition of the suspended term of incarceration.

{¶ 12} On April 10, 2012, appellant filed a notice of appeal. On April 30, 2012, consistent with past practice, appellant failed to appear for a community control violations hearing. A warrant was issued. Appellant was arrested on May 3, 2012.

{¶ 13} On May 29, 2012, the community control violation hearing was held. After admitting to the community control violation, appellant's community control was revoked. As appellant had been cautioned at the time community control was imposed, the previously suspended sentence was imposed based upon appellant's breach of the terms and conditions.

{¶ 14} Appellant sets forth the following three assignments of error:

1. The trial court abused its discretion and committed reversible error when it denied the defendant's motion to withdraw no contest plea without holding a proper full hearing.

2. The trial court abused its discretion and committed reversible error when it refused to grant the defendant's motion to withdraw no contest plea despite overwhelming evidence to the contrary.

3. The trial court abused its discretion and committed reversible error in accepting the defendant's plea despite clear evidence that it was not accepted voluntarily, knowingly, and intelligently.

{¶ 15} Throughout the course of this matter, appellant was dissatisfied with every appointed counsel and was permitted to change appointed counsel multiple times. Appellant failed to appear in court on multiple occasions, necessitating warrants. All

suggestions by appellant that his rights were somehow compromised in this matter are wholly contradicted by the record.

{¶ 16} In the first assignment of error, appellant asserts that the trial court abused its discretion by denying appellant's motion to withdraw his no contest plea without a "proper full hearing." The Ohio Supreme Court has ruled that because there is no absolute right for a defendant to withdraw a presentencing plea, there must be a hearing in which the trial court decides the reasonableness or legitimacy of withdrawing the plea. *State v. Xie*, 62 Ohio St.3d 521, 584 N.E.2d 715 (1992), syllabus. The trial court can then exercise its discretion to determine whether the plea should be withdrawn. *Id.*

{¶ 17} The record is replete with evidence that appellant was given ample notice and numerous opportunities to be heard by the trial judge. The trial court acted well within its discretion when it denied the motion to withdraw in this case. The record clearly reflects that the matter was conducted in conformity with *Xie*.

{¶ 18} Further, the scope of the hearing is only required to reflect the merit of the motion itself. *State v. Bosby*, 8th Dist. No. 94466, 2011-Ohio-599. This court has carefully reviewed the record and finds that appellant's motion lacked any compelling substantive basis. As such, the trial court properly limited the scope of the hearing and properly denied the motion to withdraw the negotiated and voluntary no contest pleas. Wherefore, we find appellant's first assignment of error not well-taken.

{¶ 19} In the second assignment of error, appellant similarly asserts that the trial court abused its discretion in denying appellant's motion to withdraw his no contest plea

“despite overwhelming evidence to the contrary.” Crim.R. 32.1, which governs the requirements for withdrawing no contest pleas, states:

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

{¶ 20} Relevant precedent delineates the factors to be considered by the trial courts in determining whether a presentence motion to withdraw a plea is warranted.

Those factors are:

- (1) whether the prosecution would be prejudiced if the plea was vacated;
- (2) whether the accused was represented by highly competent counsel;
- (3) whether the accused was given a full Crim.R. 11 hearing;
- (4) whether a full hearing was held on the motion;
- (5) whether the trial court gave full and fair consideration to the motion;
- (6) whether the motion was made within a reasonable time;
- (7) whether the motion set forth specific reasons for the withdrawal;
- (8) whether the accused understood the nature of the charges and possible penalties; and

(9) whether the accused was perhaps not guilty or had a complete defense to the crime.

State v. Eversole, 6th Dist. Nos. E-05-073, E-05-074, E-05-075, E-05-076, 2006-Ohio-3988, citing *State v. Fish*, 104 Ohio App.3d 236, 661 N.E. 2d 788 (1st Dist.1995).

{¶ 21} We have carefully considered the record of evidence in the context of the *Eversole* factors. The record shows nearly all of the factors enumerated in *Eversole* weigh against granting the motion. Significantly, appellant had access to three capable attorneys and was well represented throughout the course of the case. Additionally, the trial court had ample opportunity to properly consider the motion. The court went so far as granting continuances even in those instances when appellant failed to appear in court to argue the motion on multiple occasions. The motion was not supported by compelling objective evidence. Further, the record clearly reflects that appellant understood what was occurring and that inordinate efforts were taken in that regard throughout this case. The record shows no impropriety in the plea. The overwhelming weight of the evidence directed that the trial court deny the motion to withdraw the plea. We find appellant's second assignment of error not well-taken.

{¶ 22} In the third assignment of error, appellant asserts that the trial court abused its discretion in accepting appellant's plea. In support, appellant contends that the disputed plea was not made voluntarily, knowingly, and intelligently.

{¶ 23} Crim.R. 11 requires that a defendant receive a full explanation of the consequences of accepting a plea. The record clearly reflects that the trial judge

extensively, thoroughly, and repeatedly discussed all necessary matters with appellant. The record also clearly reflects that the trial court went to extraordinary lengths to ensure the propriety of the plea and establishes that it was knowingly, voluntarily, and intelligently entered.

{¶ 24} We find that the trial court did not abuse its discretion in accepting appellant’s plea. There is abundant evidence in the record showing the plea fully complied with Crim.R. 11. Wherefore, we find appellant’s third assignment of error not well-taken.

{¶ 25} We find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R.24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
